IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2)(b)

Description of Case

Criminal Appeal No. 182/02 Decided on 13.9.04

Raju

Versus

State

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date 13.09.04 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL

CRIMINAL APPEAL NO.182 OF 2002

Raju son of Sri Kailash,
R/o Mohalla Jatan,
P.S. Kotwali Bijnor,
District Bijnor ---------- Appellant

Versus

State of Uttaranchal ---------- Opposite party

Mr. Pankaj Miglani, learned counsel for the appellant learned A.G.A. for the State.

HON'BLE J.C.S. RAWAT, J.

1. This is a criminal Appeal preferred by appellant Raju against the judgment and order dated 28.06.2004 passed by Sri S.C. Dixit, the then Sessions Judge, Hardwar by which he convicted the appellant u/s 376 I.P.C. and sentenced him for 10 years rigorous imprisonment.

2. The facts, in nutshell, are that the complainant Rajendra Singh (P.W.1) on 5.7.2000 in day time was sitting on the shop of his father-in-law. His daughter Preeti (P.W. 4) aged about 4 years was playing there. The appellant Raju came at the shop of his father-in-law who used to come there for taking tea. He brought his daughter towards Railway Station Motichur on the pretext of seeing her train. After some time, he heard hue and cry of his daughter on which the complainant Rajendra Singh, his father-in-law Ramesh (P.W.2), Jaipal Singh and Rajesh Kumar Sharma (P.W.3) ran towards bushes. They saw that the appellant was committing rape upon her daughter and his daughter was crying. Seeing them, Raju appellant ran away. He was caught after some

beating. The blood was oozing from her vagina. The girl and the appellant were brought to the police station Kotwali where Rajendra Singh (P.W.1) lodged report (Ex.Ka1) written by Rajesh Kumar Sharma (P.W.3) on 5.7.2000 at 01.45 P.M. The distant of place of occurrence and the police station was 4 kilometers.

3. On the basis of written report (Ex.Ka1) F.I.R. (Ex.Ka5) was prepared by Head constable Mahipal Singh (P.W.7) and a case u/s 376 I.P.C. was registered against the appellant. The investigation was entrusted to S.S.I. K.V.N. Tyagi (P.W.6).

4. Km. Preeti (P.W.4) was examined by Dr. Asha Sharma (P.W.8) Medical Officer C.R.W. Hospital, Hardwar on 5.7.2000 at 3.10 P.M. The Dr. prepared injury report (Ex. Ka.9). The physical condition of the prosecutrix was unsatisfactory, pulse fast. On examination of private part of the girl the doctor found Vulva swollen, fresh excessive bleeding was present, laceration present in posterior vaginal wall, Muscle deep, upper limit of injury could not be determined, vaginal smear slide prepared and sent for pathological examination. The girl was sent for X-ray to assess the age. The girl was referred to Medical College Meerut for treatment.

5. The Investigating Officer S.S.I. K.V. N. Tyagi (P.W.6) visited the place of occurrence and prepared site plan (Ex.Ka3). Head Constable Mahipal Singh (P.W.7) prepared recovery memo (Ex.Ka7) for taking into possession underwear of the appellant. He also prepared recovery memo (Ex.ka.8) for taking into possession the frock of Km. Preeti.

6. The girl was admitted in L.L.R.M. Medical College Hospital Meerut on 6.7.2000 at 12.18. A.M. and was under the treatment of Dr. Pushpa Nagar (P.W.5) who prepared investigation report cum discharge slip (Ex.ka2). On examination the doctor found active bleeding present and vaginal muscle lacerated. The doctor opined that the age of the girl was about 4 years (3-5 years).

7. On 15.7.2000 the girl was again examined by Dr. Asha Sharma (P.W.8) who prepared Medical Report (Ex.ka10). The doctor was of the opinion that the rape was committed on the girl and the age of the girl was between 3-5 years.

8. After completing the investigation the Investigating Officer submitted charge sheet (Ex.Ka4).

9. The blood stained under wear of the appellant and frock of the girl were sent for chemical examination and Assistant Director sent examination (Ex. ka11).

10. Charge was framed against the appellant under section 376 I.P.C. for committing rape on Km. Preeti. The appellant pleaded not guilty and claimed to be tried.

11. Before the trial court the prosecution examined complainant P.W.1 Rajendra Singh who proved written report Ex. Ka1 and narrated the incident, P.W.2 Ramesh, P.W.3 Rajesh Kumar Sharma are the eye-witnesses, P.W.4 Km. Preeti is the victim. P.W.5 Dr. Puspa Nagar proved medial investigation-cum-discharge slip Ex.2, P.W.6 S.S.I K.V.N. Tyagi investigated the case the submitted charge sheet against the appellant. P.W.7 H.C. Mahipal Singh proved F.I.R. Ex.Ka5, Ex.Ka6 G.D. entry, recovery memo Ex. Ka7 and recovery memo Ex.Ka8.

P.W.8 Dr. Asha Sharma proved injury reports Ex.Ka9 and Ex.Ka10.

12. The appellant in his statement u/s 313 Cr.P.C. denied the prosecution allegations and stated that he has been falsely implicated in this case. He further stated that the complainant Rajendra Singh PW1 had taken Rs. 15,000/- from him. When he demanded the loan back the complainant and the witnesses had beaten him and falsely implicated in the case.

13. On appraisal of the entire evidence on record the learned trial court held the appellant guilty under section 376 I.P.C. for committing rape on the girl on 5.7.2000 and convicted and sentenced him as mentioned above. It is against this verdict that the appellant has come up in this appeal before this court.

14. I have heard the learned counsel for the appellant and learned A.G.A. and perused the record.

15. The learned counsel of the appellant contended that the prosecution could not prove the guilt against the appellant beyond reasonable doubt. The learned A.G.A. refuted the contention.

16. There are three eyewitnesses of the occurrence apart from Km. Preeti, PW4. PW2 Ramesh is the father-in-law of Rajendra Singh PW1, and Rajesh Kumar Sharma PW3 was sitting on the tea stall of PW2 Ramesh at the time of the incident. Rajendra Singh PW1, Ramesh PW2 and Rajesh Kumar Sharma PW3 have stated in their evidence that on 05.07.2000 the witnesses were sitting on the tea shop of Ramesh PW2, Km. Preeti PW4 aged about 4 years was playing nearby the shop. The appellant Raju used to come on the tea shop and on the date of

occurrence the appellant also came there for taking tea. The appellant took Km. Preeti PW4 towards Railway Station Motichur on the pretext of seeing her train. After some time the witnesses heard hue and cry of Km. Preeti and hearing this they ran towards bushes. They saw that the appellant was committing rape on the girl and she was crying. Seeing the witnesses the appellant escaped to run. The witnesses caught him after some beating at the place of occurrence and the appellant was brought to the Police Station. These witnesses were cross-examined by the defence at length, but the defence failed to elicit anything from their evidence. The witnesses remained unshaken during their cross-examination. The witnesses have deposed with regard to the incident. Their evidence is natural and trustworthy.

17. The appellant in his statement U/s 313 Cr.P.C. has stated that the complainant borrowed a sum of Rs. 15,000/- from the appellant and he went to the tea stall to take the money back from the complainant. When he demanded money back the complainant and the witnesses had beaten him and falsely implicated the him in this case. The appellant did not adduce any evidence in support of his contention. The appellant could not make out his defence from the evidence of the prosecution witnesses. As such the defence is not credible and cogent. On the other hand, the prosecution evidence is totally credible and trustworthy. Thus there is no motive to falsely implicate the appellant in the present case.

18. The Prosecution also adduced the evidence of Km. Preeti, PW4 aged about 4 years at the time of the incident. Her evidence was recoded in question and

answer form. She has narrated the entire prosecution story before the trial court. She stated that the appellant committed rape on her. The evidence of PW4 also stands corroborated by the evidence of PW1 Rajendra Singh, PW2 Ramesh and PW3 Rajesh Kumar Sharma and all the witnesses have seen the appellant committing rape upon the girl.

19. The oral testimony of the prosecution witnesses also stands corroborated by the medical evidence. The prosecution has adduced the evidence of Dr. Asha Sharma, PW8, Medical Officer, C.R.W. Hospital, Hardwar, who examined Km. Preeti on 05.07.2000 at 3.10 p.m. The doctor found during medical examination of the private part of the girl that there was excessive bleeding present, laceration present in posterior vaginal wall, muscle deep, upper limit of injury could not be determined. The X-ray of the prosecutrix was advised and she was referred to Medical College, Meerut. The girl was admitted in L.L.R.M. Medical College Hospital, Meerut on 06.07.2000 at 12.18 a.m. She was under the treatment of Dr. Pushpa Nagar PW5 who examined her and prepared investigation report, Ex. Ka 2. Thereafter X-ray was taken in the Hospital and the girl was found aged about 4 years. On 15.07.2000 Km. Preeti was again examined by Dr. Asha Sharma PW8, who has given definite opinion that the rape was committed on the girl and the age of the girl was between 3-5 years.

20. The incident took place on 05.07.2000 at about 1.00 p.m. and the report of the incident was lodged at 1.45 p.m. on the same day. Thus the matter was reported at the Police Station promptly. The existence of prompt

F.I.R. does not rule out any occasion for consultation or manipulation. The distance of Police Station from the place of occurrence is about 4 kilometers. The information also incorporated the details with regards to the commission of the offence in the F.I.R. The ocular testimony of the prosecution witnesses further stands corroborated by the prompt lodging of the F.I.R.

21. The Head Constable Mahipal Singh, PW7 has prepared the recovery memo Ex. Ka 7 for taking into possession the underwear of the appellant and he also prepared recovery memo Ex. ka 8 for taking into possession the frock of the girl. Both the clothes were sent for chemical examination and the chemical examiner after analysis submitted report Ex. Ka 11 in which he has mentioned that the underwear and the frock contained human blood and also human semen. Thus this fact further corroborates the evidence of eyewitnesses with regard to the commission of the offence.

22. In view of the above discussion, I am fully convinced that the appellant Raju was rightly convicted and sentenced by the trial court for the offence of committing rape upon Km. Preeti, a minor girl. No interference is required by this court. The appeal has no merits. The appeal must be dismissed and it is dismissed.

(J.C.S. Rawat, J)

September 13th, 2004